

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

UNITED STATES OF AMERICA,  
Plaintiff,  
v.  
HENRY AMARILLAS,  
Defendant.

Case No. 2:99-CR-0331-RFB

**Supplemental  
ORDER  
On Motion to Vacate**

In its order (ECF No. 64) denying Mr. Amarillas' Motion to Vacate, the Court did not include a ruling on whether or not it would issue a certificate of appealability. The Court now supplements its ruling and issues Mr. Amarillas a certificate of appealability.

The Court was persuaded in its previous ruling by the Ninth Circuit’s decision in United States v. Howard, 650 Fed. App’x. 466, 468 (9th Cir. 2016) (unpublished) and adopted the reasoning of that decision in rejecting Amarillas’ motion. However, this is an unpublished opinion with no binding or controlling authority. Moreover, there are significant enough similarities between the language analyzed and reasoning applied by the Supreme Court in Johnson v. United States, 135 S. Ct. 2551 (2015) and the language at issue in this case such that reasonable jurists might differ as to whether Johnson applies in this case, including whether Amarillas has a valid constitutional claim.

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1 Accordingly,

2 **IT IS THEREFORE ORDERED** that a certificate of appealability shall issue for Mr.  
3 Amarillas to appeal this Court's order (ECF No. 64) denying the Motion to Vacate.

4 DATED this 5th day of June, 2018.



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6 RICHARD F. BOULWARE, II  
7 UNITED STATES DISTRICT JUDGE  
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